

TOWNSHIP OF BERNARDS **ZONING BOARD OF ADJUSTMENT**

REGULAR MEETING AGENDA v2

Warren Craft Meeting Room

May 8, 2024

7:30 PM

This meeting will be held in person in the Warren Craft Meeting Room. For those interested in watching on their computers, the link will be available at 7:30 PM by clicking on the "Watch the Meeting Live" icon on the Bernards Township Zoning Board of Adjustment web page. Please note that all questions/comments must be made in person.

1. CALL TO ORDER

2. FLAG SALUTE

3. OPEN PUBLIC MEETING STATEMENT

4. OATH OF OFFICE

A. Kippy Piedici, Regular Member, filling unexpired 4-year term (Pavlosky), expiring 12/31/2027

5. ROLL CALL

6. APPROVAL OF MINUTES

A. April 3, 2024 – Regular

B. April 11, 2024 - Special

7. APPROVAL OF RESOLUTIONS

A. Phil 120 LLC; Block 8501 Lot 35; 437 King George Road; ZB24-002 (approved)

B. Patel, G./Joshi, P.; Block 7702, Lot 10.05; 3 Fenwick Place; ZB24-005 (approved)

C. Mejia, S./Kennedy, S.; Block 3901 Lot 66; 16 Autumn Drive; ZB24-007 (approved)

8. COMPLETENESS AND PUBLIC HEARING

A. Maryles, David & Tara; Block 1902, Lot 9; 17 Culberson Road; Bulk Variance; ZB24-009 (*to be carried to 06/05/2024 with no further notice required*)

B. [Riverwalk Village LLC](#); Block 11202, Lot 10; 665 Martinsville Road; Conditional Use Variance; ZB24-006 (carried from 04/03/2024)

C. [Donvee LLC](#); Block 6001, Lot 4; 77 Stonehouse Road; Bulk Variance; ZB24-008

D. [Wiwi, Christopher & Amy](#); Block 1104, Lot 16; 16 Monroe Place; Bulk Variance; ZB24-010

9. 2023 ANNUAL REPORT

10. COMMENTS FROM MEMBERS

11. COMMENTS FROM STAFF

12. ADJOURN

04/25/2024 ds

TOWNSHIP OF BERNARDS
2024 ZONING BOARD OF ADJUSTMENT APPLICATION

RECEIVED

FEB - 5 2024

PLANNING/ZONING BOARDS

- | | |
|--|--|
| <input type="checkbox"/> Bulk or Dimensional ("c") Variance
<input type="checkbox"/> Use ("d") Variance
<input checked="" type="checkbox"/> Conditional Use ("d") Variance
<input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance
<input type="checkbox"/> Site Plan - Preliminary / Final | <input type="checkbox"/> Appeal of Zoning Officer's Decision
<input type="checkbox"/> Interpretation of Zoning Ordinance
<input type="checkbox"/> Minor Subdivision
<input type="checkbox"/> Major Subdivision - Preliminary / Final
<input type="checkbox"/> Other (specify): _____ |
|--|--|

1. APPLICANT: Riverwalk Village LLC c/o Silbert Realty & Management Co. Inc.

Address: 152 Liberty Corner Road, Warren, New Jersey 07059

Phone: (home) _____ (work) (908) 604-6900 (mobile) _____

Email (will be used for official notifications): _____

2. OWNER (if different from applicant): Same as Applicant

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: Michael E. Silbert, Esq. of DiFrancesco Bateman et al.

Address: 15 Mountain Boulevard, Warren, New Jersey 07059

Phone: (908) 757-7800 ext. 128 Email (will be used for official notifications): msilbert@newjerseylaw.net

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: _____ Profession: _____

Address: _____

Phone: _____ Email (will be used for official notifications): _____

5. PROPERTY INFORMATION: Block(s): 11201 Lot(s): 10 Zone: E-2

****NOTE** - See Application Cover Letter Attached which addresses access through Lot 1 in Block 1 (Warren Township)**
Street Address: 665 Martinsville Road Total Area (square feet/acres): 9.48 Acres

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☐ No ☒ Yes (if yes, explain or attach Board resolution) See Attached

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain) _____

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

[] No [X] Yes (if yes, explain) See Attached

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: A retail and office building and related amenities currently exist on the property (Riverwalk Village) as a conditional use. The Applicant seeks to locate an office tenant on the first floor, in the space identified in the attached floor plan. The tenant will occupy approximately ±3,091 SF of delineated space on the first floor .

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.): As stated above, the retail and office building(s) on the Property are conditional uses in the E-2 Zone. Pursuant to Sec. 21-12.2(n)(5) of the Township's Ordinances, "A retail center shall contain no office use on the first floor." Since the application is for an office tenant on the first floor, "(d)(3)" variance relief is required as a result of the Applicant's departure from the conditional use requirements.

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: See Variance Rider Attached

12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, Brian S. Silbert and _____ hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): Brian S. Silbert and _____

Sworn and subscribed before me, this 29th day of January, 2024.

Jana Spota
Notary

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property owners, then the property owner or the additional owners must complete the following:

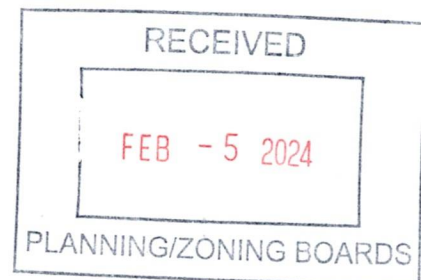
I/we, Bruce Bocina the owner(s) of the property described in this application,

hereby authorize Silbert Realty Management to act as my/our agent for purposes of making and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all conditions of approval thereof.

Signature of owner(s): Bruce Bocina

Sworn and subscribed before me, this 29th day of January, 2024.

Jana Spota
Notary



VARIANCE RIDER
TOWNSHIP OF BERNARDS
RIVERWALK VILLAGE, LLC

Block: 11201, Lot: 10 (665 Martinsville Road – Bernards Township)
Block: 1, Lot:1 (201 Liberty Corner Road – Warren Township)

BACKGROUND INFORMATION

The Applicant seeks to locate an office/medical use of approximately ±3,091 SF of delineated space on the first floor of the existing retail center located on Lot 10. The property for which variance relief is sought is identified as Lot 10 in Block 11201, as designated on the Official Tax Map of the Township of Bernards, more commonly known as 665 Martinsville Road (the “**Bernards Property**”). The Bernards Property is located in the Bernards Township E-2 Employment, Office, and Manufacturing Zone. Access to the Bernards Property is facilitated through a portion of property located in the Township of Warren, which property is identified as Lot 1 in Block 1, as designated on the Official Tax Map of the Township of Warren, more commonly known as 201 Liberty Corner Road (a/k/a 675 Martinsville Road, Basking Ridge) (the “**Warren Property**”). The Warren Property is located in the Warren Township OR – Office Research Zone. The Bernards Property and the Warren Property are hereinafter referred to collectively as the “**Subject-Property**”. There are no exterior site improvements proposed in connection with this application.

VARIANCE RELIEF REQUESTED

As it relates to the Warren Property, attached hereto is a letter from the Warren Township Zoning Officer and Planner, dated January 29, 2024 (“Letter of No Jurisdiction”), which letter indicates that the Application does not trigger any departures from the Warren Township Zoning Ordinance as it relates to the Warren Property. Furthermore, the Letter of No Jurisdiction indicates that jurisdiction over this Application rests solely with the Bernards Board of Adjustment.

It should be noted that there have been previous applications and/or appeals to the Bernards Township Planning Board for this Property. Preliminary and final site plan approval was granted by the Township’s Planning Board for the existing retail center on Lot 10 in a Resolution memorialized on September 5, 2000, a copy of which is attached hereto (the “Original Approval”). The Original Approval granted a modification from §21-39.1 for maximum size of parking spaces for retail use, where 10 feet by 20 feet was required, and 9 feet by 18 feet was approved.

Use variance relief pursuant to N.J.S.A. §40:55D-70(d)(3) is required to locate the office/medical use on the first floor of the retail center on Lot 10, since §21-12.3(n)(5) of the Bernards Township Zoning Ordinance, prohibits office uses on the first floor of a retail center.

The Board has the power to grant “(d)(3)” conditional use variances pursuant to N.J.S.A. §40:55D-70(d)(3) “in particular cases and for special reasons” (i.e. the “positive criteria”)

POSITIVE CRITERIA:

As it pertains to the positive criteria of a “d(3)” variance, the Board’s focus must be on whether the site remains appropriate for the conditional use despite the failure to conform to all of the ordinance’s conditions. Coventry Square v. Westwood Board of Adjustment, 138 N.J. 285, 298-299 (1994). The standard does not require a finding that the site is particularly suitable for the use, as is the case with a “d(1)” use variance, since the use itself is permitted (albeit conditionally) and it is the conditions attached to the use from which deviations are sought. Id. at 297.

The zoning board is urged to grant a conditional use variance to permit office/medical use on the first floor of an existing retail center. Despite not conforming to all ordinance conditions, the conditional use variance sought can be granted because the site remains appropriate for the proposed use.

The proposed tenant can be characterized as a “retail dentistry” occupying approximately 3,000 SF on the ground floor of a 50,000 SF retail center. The tenant exclusively occupies the ground floors of retail centers. The attempt to place the tenant on the second floor was unsuccessful, as their business model is tailored to first-floor retail center setups. Recent real estate market trends indicate a growing preference among medical/office users to locate their offices in retail centers. For instance, it has become commonplace to see med spas successfully operating within retail centers, reflecting the evolving nature of the office/medical use in the post COVID-19 world.

Based upon the existing tenants in the retail center, it is readily apparent that the retail center and overall site has the flexibility to accommodate diverse uses on the first floor. The retail center currently houses a variety of retail, restaurant, and service tenants, all of which are conditionally permitted uses. Notable tenants include Ling Ling's Restaurant, European Wax Center, Joy of Living Interior & Design, a Nail Salon, the Soup Shoppe, Warren Eye Care, a Pharmacy, O'Bagel, a Jewelry Store, Supercuts, Hills of Herat, 3 West, and a women's apparel store.

The office/medical use will only occupy a small portion of the ground floor, leaving the majority of the space for other conditionally permitted tenants. This ensures that the overall tenant mix and character of the retail center are maintained. Notably, the proposed dentistry is replacing what can ironically be characterized as a real estate office. This history suggests that the site has functioned with an office use on the ground floor previously, supporting the argument for continuity in allowing office/medical use on the ground floor. Again, the conditional use variance can be granted under the “positive criteria” because the site remains appropriate for the proposed use despite not conforming to all the conditional use requirements under Section 21-12.3(n)(5).

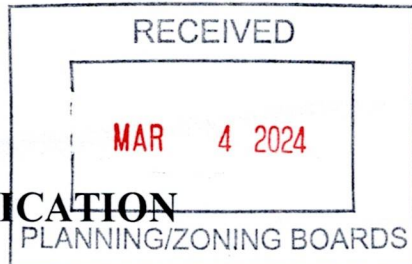
NEGATIVE CRITERIA:

As to the negative criteria of a “d(3)” conditional use variance, the Board’s focus must be on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial detriment to the public good. Coventry Square, 138 N.J. at 299. Similarly, the Board’s focus in a “d(3)” conditional use variance case must be on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial impairment of the intent and purpose of the master plan and zoning ordinance, i.e., whether the proposal was “reconcilable with the zone.” TSI East Brunswick v. East Brunswick Board of Adj., 215 N.J. 26, 43-46 (2013).

The presence of a retail dentistry use on the first floor of the existing retail center contributes to the well-being of the community by providing essential healthcare services in a conveniently accessible location. The proposed dentistry on the first floor, as opposed to the second floor, does not pose substantial detriment to the public good. The space occupied by the dentistry is de minimus relative to the overall size of the retail center. This ensures that the introduction of the medical/office use on the first floor maintains a proportionate and limited footprint, minimizing any potential impact on the overall dynamics of the retail center it reinforces the argument that the proposed use does not *substantially* impair the intent and purpose of the master plan.

If necessary, the Board has the ability to impose reasonable conditions, on its approval to ensure that the first floor medical/office use do not cause substantial detriment to the public good. Additionally, conditions can be imposed in its approval of the conditional use variance sought to ensure that the deviations from the conditional use requirements do not cause substantial impairment of the intent and purpose of the Township’s master plan and zoning ordinance.

TOWNSHIP OF BERNARDS
2024 ZONING BOARD OF ADJUSTMENT APPLICATION



- | | |
|---|---|
| <p><input checked="" type="checkbox"/> Bulk or Dimensional ("c") Variance</p> <p><input type="checkbox"/> Use ("d") Variance</p> <p><input type="checkbox"/> Conditional Use ("d") Variance</p> <p><input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance</p> <p><input type="checkbox"/> Site Plan - Preliminary / Final</p> | <p><input type="checkbox"/> Appeal of Zoning Officer's Decision</p> <p><input type="checkbox"/> Interpretation of Zoning Ordinance</p> <p><input type="checkbox"/> Minor Subdivision</p> <p><input type="checkbox"/> Major Subdivision - Preliminary / Final</p> <p><input type="checkbox"/> Other (specify): _____</p> |
|---|---|

1. APPLICANT: Donvee LLC

Address: 180 Talmadge Road, #1218, Edison NJ 08817

Phone: (home) _____ (work) _____ (mobile) 551-580-4783

Email (will be used for official notifications): donvee012@gmail.com

2. OWNER (if different from applicant): Same as applicant

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: John J. Sullivan, Jr., Esq. / Vastola & Sullivan

Address: 495 Union Avenue, Middlesex, NJ 08846

Phone: 732-560-0888 Email (will be used for official notifications): vmars@vfesqs.com/
jsullivan@vfesqs.com

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: Mark E. Reme, PE Profession: Engineer

Address: 20 Church Street, Allentown, NJ 08501

Phone: 609-439-4511 Email (will be used for official notifications): info@remeengineering.com

5. PROPERTY INFORMATION: Block(s): 6001 Lot(s): 4 Zone: R-4

Street Address: 77 Stonehouse Road Total Area (square feet/acres): .511 acres

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain or attach Board resolution) _____

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain) _____

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

[x] No [] Yes (if yes, explain) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: _____

See annexed project description.

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.): _____

See annexed project description.

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: _____

See annexed project description.

12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, Vaibhav Shah, Managing Member of xand Donvee, LLC hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): [Signature] and _____

Sworn and subscribed before me, this 22 day of February, 2024.

Notary

[Signature]
JOHN J. SULLIVAN, JR.

AN ATTORNEY

AT LAW OF THE STATE OF N.J.

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property owners, then the property owner or the additional owners must complete the following:

I/we, Vaibhav Shah, Managing Member of the owner(s) of the property described in this application, Donvee, LLC

hereby authorize John J. Sullivan, Jr., Esq. to act as my/our agent for purposes of making and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all conditions of approval thereof.

Signature of owner(s): [Signature]

Sworn and subscribed before me, this 22 day of February, 2024.

Notary

[Signature]
JOHN J. SULLIVAN, JR.

AN ATTORNEY

AT LAW OF THE STATE OF N.J.

PROJECT DESCRIPTION

The property is located at 77 Stonehouse Road, designated at Lot 4, Block 6001 and is currently developed with a 2 story single family home. The property is located in the R-4 Zoning District.

The applicant is requesting approval to construct an addition to the rear of the dwelling in order to add a deck, mudroom and two car garage to the first floor and bathrooms, bedrooms and laundry room to the second floor with related site improvements.

The existing detached garage, shed and walkway are to be removed.

The R-4 Zoning District permits one (1) family dwellings. Therefore, the use is permitted.

All of the bulk standards are being met with the exception of the conditions as set forth below.

Item	Required	Existing	Proposed	Variance
Lot area	1 acre	.511 acres	.511 acres	Yes – existing*
Lot width	200'	131.51'	131.51'	Yes – existing*
Lot frontage	100'	131.51'	131.51'	No
Front yard setback	75'	65.4'	65.4'	Yes – existing*
1 side yard setback	20'	24.1'	24.1'	No
Combined side yard setback	50'	73.9'	73.9'	No
Rear yard setback	75'	61.65'	41.3'	Yes – existing but increased**
Accessory side yard setback	15'	Complies	N/A	No
Accessory rear yard setback	20'	shed 9.6'	N/A	No
Lot coverage	15%	9.65%	10.96%	No
Height	35'	16.73'	28'	No
Minimum improvable area	10,000 sf	22015.22 sf	22015.22 sf	No

* Denotes existing non-conformity

** Denotes proposed non-conformity

Each variance is a pre-existing condition. The variance for rear yard setback is being exacerbated.

The Board may consider granting this application under both a C(1) hardship and a C(2) benefits outweigh detriments standard. Under the hardship, all variance conditions are pre-existing and/or are the result of the lot layout. Under the benefits outweigh the detriments standard, it is submitted that the benefit is to erect a modest addition to allow expansion of the home which includes eliminating the impact of the pre-existing shed variance condition. There are no substantial detriments to the public good nor substantial adverse impact upon the zoning ordinance and zone plan as the use is permitted, most of the variance conditions are pre-existing and one variance condition is being eliminated. The rear yard setback variance condition is minimal and will have no impact on neighboring properties.

**TOWNSHIP OF BERNARDS
2024 ZONING BOARD OF ADJUSTMENT APPLICATION**

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APR 4 2024

PLANNING/ZONING BOARDS

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|--|--|
| <input checked="" type="checkbox"/> Bulk or Dimensional ("c") Variance | <input type="checkbox"/> Appeal of Zoning Officer's Decision |
| <input type="checkbox"/> Use ("d") Variance | <input type="checkbox"/> Interpretation of Zoning Ordinance |
| <input type="checkbox"/> Conditional Use ("d") Variance | <input type="checkbox"/> Minor Subdivision |
| <input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance | <input type="checkbox"/> Major Subdivision - Preliminary / Final |
| <input type="checkbox"/> Site Plan - Preliminary / Final | <input type="checkbox"/> Other (specify): _____ |

1. APPLICANT: Christopher & Amy Wiwi

Address: 16 Monroe Place, Basking Ridge, NJ

Phone: (home) 201-970-6074 (work) _____ (mobile) _____

Email (will be used for official notifications): cawivi@gmail.com

2. OWNER (if different from applicant): same as applicant

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: _____

Address: _____

Phone: _____ Email (will be used for official notifications): _____

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: Mark Mantyla PLS, PE Profession: MBM Surveying & Engineering LLC

Address: 139 West Mountain Rd, Sparta, NJ 07871

Phone: 973-222-6986 Email (will be used for official notifications): markjm@PTD.net

5. PROPERTY INFORMATION: Block(s): 1104 Lot(s): 16 Zone: R-6

Street Address: 16 Monroe Place Total Area (square feet/acres): 0.74 acres

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain or attach Board resolution) _____

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain) _____

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

☒ No ☐ Yes (if yes, explain) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: _____

Existing single family residence / proposed inground pool
w/ associated patio / walkway

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.): _____

Per section 21-15.1(D) / Plus table 50 / Requesting lot
coverage of 22.15% proposed where 18% is permitted

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: _____

Please see attached

12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, Chris Wini and Amy Wini hereby depose and say that
all of the above statements and the statements contained in the materials submitted herewith are true and
correct.

Signature of Applicant(s): [Signature] and [Signature]

Sworn and subscribed before me, this 01 day of April, 2024

[Signature]
Notary

DIANE ESTEVEZ

A Notary Public of New Jersey

My Commission Expires June 16, 2026

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property
owners, then the property owner or the additional owners must complete the following:

I/we, _____ the owner(s) of the property described in this application,
hereby authorize _____ to act as my/our agent for purposes of making
and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all
conditions of approval thereof.

Signature of owner(s): _____

Sworn and subscribed before me, this _____ day of _____, 20__.

Notary